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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

RAQUEL HERNANDEZ and CARLOS)	No. C 10-4198 TEH
HERNANDEZ,)	
)	
Plaintiffs,)	STIPULATION TO PROTECTIVE
)	ORDER; PROPOSED ORDER
v.)	
)	
THOMAS VILSACK, Secretary of the U.S.)	
Department of Agriculture,)	
)	
Defendant.)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective

1 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
2 or responses to discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment under the
4 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
5 this Stipulated Protective Order does not entitle them to file confidential information under seal;
6 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
7 applied when a party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it
12 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
13 of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
15 (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items
17 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness
24 or as a consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action. House
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or other
28 legal entity not named as a Party to this action.

1 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
 2 action but are retained to represent or advise a party to this action and have appeared in this action
 3 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4 2.10 Party: any party to this action, including all of its officers, directors
 5 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 7 Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support
 9 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
 10 organizing, storing, or retrieving data in any form or medium) and their employees and
 11 subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is designated
 13 as "CONFIDENTIAL."

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
 15 a Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected
 18 Material (as defined above), but also (1) any information copied or extracted from Protected
 19 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
 20 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
 21 Material. However, the protections conferred by this Stipulation and Order do not cover the
 22 following information: (a) any information that is in the public domain at the time of disclosure to
 23 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
 24 a result of publication not involving a violation of this Order, including becoming part of the public
 25 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
 26 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
 27 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
 28 of Protected Material at trial shall be governed by a separate agreement or order.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the
6 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
7 including the time limits for filing any motions or applications for extension of time pursuant to
8 applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
11 Party or Non-Party that designates information or items for protection under this Order must take
12 care to limit any such designation to specific material that qualifies under the appropriate standards.
13 The Designating Party must designate for protection only those parts of material, documents, items,
14 or oral or written communications that qualify – so that other portions of the material, documents,
15 items, or communications for which protection is not warranted are not swept unjustifiably within
16 the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
20 and burdens on other parties) expose the Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must promptly notify
23 all other Parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
27 designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents, but
2 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
3 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
4 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

6 A Party or Non-Party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party has indicated which
8 material it would like copied and produced. During the inspection and before the designation, all
9 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
10 inspecting Party has identified the documents it wants copied and produced, the Producing Party
11 must determine which documents, or portions thereof, qualify for protection under this Order. Then,
12 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”
13 legend to each page that contains Protected Material. If only a portion or portions of the material on
14 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
15 (e.g., by making appropriate markings in the margins).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
17 Designating Party identify on the record, before the close of the deposition, hearing, or other
18 proceeding, all protected testimony.

19 (c) for information produced in some form other than documentary and for any other
20 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
21 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
22 portion or portions of the information or item warrant protection, the Producing Party, to the extent
23 practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
25 to designate qualified information or items does not, standing alone, waive the Designating Party’s
26 right to secure protection under this Order for such material. Upon timely correction of a
27 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
28 in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
3 of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the original
7 designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
9 process by providing written notice of each designation it is challenging and describing the basis for
10 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
11 must recite that the challenge to confidentiality is being made in accordance with this specific
12 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
13 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
14 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
15 Challenging Party must explain the basis for its belief that the confidentiality designation was not
16 proper and must give the Designating Party an opportunity to review the designated material, to
17 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
18 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only
19 if it has engaged in this meet and confer process first or establishes that the Designating Party is
20 unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
23 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
24 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
25 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
26 competent declaration affirming that the movant has complied with the meet and confer requirements
27 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
28 including the required declaration within 21 days (or 14 days, if applicable) shall automatically

1 waive the confidentiality designation for each challenged designation. In addition, the Challenging
 2 Party may file a motion challenging a confidentiality designation at any time if there is good cause
 3 for doing so, including a challenge to the designation of a deposition transcript or any portions
 4 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
 5 declaration affirming that the movant has complied with the meet and confer requirements imposed
 6 by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the
 8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
 9 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 10 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file
 11 a motion to retain confidentiality as described above, all parties shall continue to afford the material
 12 in question the level of protection to which it is entitled under the Producing Party's designation until
 13 the court rules on the challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 16 disclosed or produced by another Party or by a Non-Party in connection with this case only for
 17 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 18 disclosed only to the categories of persons and under the conditions described in this Order. When
 19 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13
 20 below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a location
 22 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
 25 any information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 27 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 28 information for this litigation and who have signed the "Acknowledgment and Agreement to Be

Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Plaintiffs, Raquel Hernandez and Carolos Hernandez, after they have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) the court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the

1 Non-Party.

2 (c) If the Non-Party fails to object or seek a protective order from this court
3 within 14 days of receiving the notice and accompanying information, the Receiving Party may
4 produce the Non-Party's confidential information responsive to the discovery request. If the
5 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in
6 its possession or control that is subject to the confidentiality agreement with the Non-Party before
7 a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the
8 burden and expense of seeking protection in this court of its Protected Material.

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this Stipulated
12 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
13 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
14 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
15 of all the terms of this Order, and (d) request such person or persons to execute the
16 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
18 PROTECTED MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain inadvertently
20 produced material is subject to a claim of privilege or other protection, the obligations of the
21 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
22 is not intended to modify whatever procedure may be established in an e-discovery order that
23 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
24 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
25 information covered by the attorney-client privilege or work product protection, the parties may
26

27
28 ¹The purpose of this provision is to alert the interested parties to the existence of
confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
confidentiality interests in this court.

1 incorporate their agreement in the stipulated protective order submitted to the court.

2
3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
5 to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
7 Order no Party waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
9 Party waives any right to object on any ground to use in evidence of any of the material covered by
10 this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating
12 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
13 in the public record in this action any Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
15 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
16 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
17 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
18 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
19 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
20 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

21 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action, as
22 defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing
23 Party or destroy such material. As used in this subdivision, "all Protected Material" includes all
24 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the
25 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
26 must submit a written certification to the Producing Party (and, if not the same person or entity, to
27 the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not

retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 9, 2011

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/
ANN MARIE REDING²
Assistant United States Attorney
Attorneys for Defendant

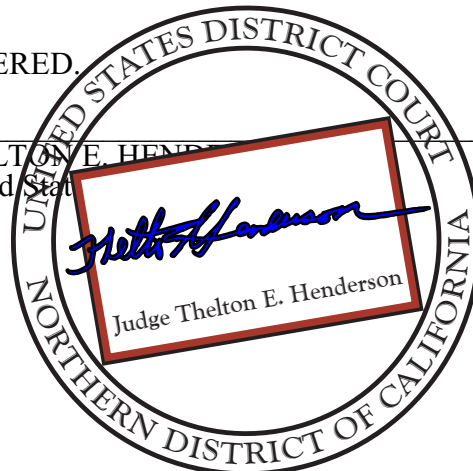
Dated: May 9, 2011

/s/
MURLENE J. RANDLE
Attorney for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 05/12/2011

THELTON E. HENDERSON
United States District Judge



²I, Ann Marie Reding, hereby attest that I obtained the concurrence in the filing of this document of all signatories whose signatures are represented by an /s/.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of Hernandez, et al. v. Vilsack, C 10-4198 TEH. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I hereby consent to the jurisdiction of the Northern District of California if any such action is brought against me. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]